

Bank of America



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BY ELECTRONIC & OVERNIGHT DELIVERY

March 12, 2004

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Attention: Ms. Jennifer J. Johnson, Secretary

Re: Docket No. R-1176
Proposed Rule to Amend Regulation

Dear Ms. Johnson:

Bank of America Corporation ("Bank of America") appreciates the opportunity to comment on the proposed amendments to Regulation CC that would implement the Check Clearing for the 21st Century Act ("Check 21") and clarify some existing provisions of Regulation CC and its commentary ("the Proposal").

The world's 7th most profitable company, Bank of America is committed to making banking work for customers and clients like it never has before. Through innovative technologies and the ingenuity of its people, Bank of America provides individuals, small businesses and commercial, corporate and institutional clients across the United States and around the world new and better ways to manage their financial lives. The company enables customers to do their banking and investing whenever, wherever and however they choose through the nation's largest financial services network, including approximately 4,400 domestic offices and more than 13,200 ATMs, as well as 31 international offices serving clients in more than 150 countries, and an Internet Web site that provides online banking access to 7 million active users, more than any other bank. The company's Web site is <http://www.bankofamerica.com>.

Bank of America has supported the Board's efforts to facilitate the broader use of electronic check processing through the enactment of Check 21 and commends the Board on developing regulations that will advance that goal. Since the Board issued its proposed regulations in December of 2003, Bank of America has worked closely with

many members of the industry to review the Board's proposed regulations. Bank of America has signed two comment letters being submitted separately to the Board: the joint comment letter submitted on behalf of many financial services industry organizations and technology companies (the "joint letter"); and the letter from the Electronic Check Clearing House Organization (ECCHO), to which Bank of America belongs. Bank of America strongly supports the positions taken in those letters, as well as in the comment letter submitted by The New York Clearing House Association L.L.C. and its affiliates, of which Bank of America also is a member. The detailed comments and suggestions contained in those letters are the result of many long and exhaustive considerations of the Board's proposed regulations and comments, including the impact that such rules may have on the nation's check processing systems and consumers who receive substitute checks. This letter supplements those letters, and does not repeat the lengthy comments that they contain.

Additionally, we would like to bring to the Board's attention a minor discrepancy between the definitions of "new accounts" used in subpart B and subpart D of Regulation CC. The commentary makes it clear that this discrepancy was not intended: The Board's commentary to §229.54(d), dealing with the availability of a recredit provided by a bank under §229.54(c) states that the exceptions in subpart D "are meant to operate in the same manner as the corresponding new account and repeated overdraft exceptions in subpart B (see §229.13(a) and (d))." However, the new account exception under §229.13(a)(2) in subpart B does not consider an account opened within the last 30 days to be a new account if "each customer on the account has had, within 30 calendar days before the account is established, another account at the depository bank for at least 30 days." The definition of new account under §229.54(d)(2)(i) in subpart D does not contain that same reference to a customer's other accounts.

As explained in further detail in the three comment letters referenced above, Bank of America strongly favors the Board's proposal to include a demand draft warranty in Regulation CC. Including such a warranty would provide a uniform, nationwide solution to the problem of unauthorized drafts. Currently, the right of a drawee bank to shift the liability for the unauthorized payment of such an item depends on state law(s) governing the various banks involved in the collection of that item. If the drawee and depository banks are both located in states that have enacted demand draft warranties, the loss may be shifted to the depository bank or its customer. Those are the parties that are in the best position to ensure that the item was authorized. In fact, the usual language on a demand draft indicates that it was authorized by the drawer. We support the Board's proposal to have Regulation CC expressly recognize and enforce such warranties. We strongly believe that any such warranty should apply equally to all demand drafts, and not just those drawn on consumer accounts. We also believe that the warranty should provide the same coverage that may be found in California's version, as well as the multiple states that have followed California's lead.

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We would be happy to discuss in greater detail any views set out in this letter or in the other comment letters supported by Bank of America, or to discuss any new ideas that the regulatory authorities wish to pursue. Bank of America would welcome the opportunity to participate in a meeting with Board representatives, as suggested in the joint letter, to discuss the substantial comments which are being submitted. Please contact me for any further information about Bank of America's position.

Thank you again for this opportunity to comment.

Sincerely,

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